



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 25, 1998

Mr. Eric M. Bost  
Texas Department of Human Services  
P.O. Box 149030  
Austin, Texas 78714-9030

OR98-2866

Dear Mr. Bost:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 120166.

The Texas Department of Human Services (the "department") received two requests for the investigative records relating to a sexual harassment complaint. The two requestors are the complainant and her attorney. You contend that the requested information is excepted from disclosure pursuant to section 552.103 of the Government Code. We have considered the exception you claim and reviewed the documents submitted for our review.

Section 552.301 of the Government Code provides that a governmental body must ask the attorney general for a decision as to whether requested documents must be disclosed not later than the tenth business day after the date of receiving the written request. The department received the first written request for information on August 26, 1998. You explain that you were processing this first request when you received the second written request for information from the complainant's attorney. You received the second request on September 2, 1998, before the ten-business-day deadline of September 10, 1998 expired on the first request. You further explain that you did not reasonably anticipate litigation until you received the second request from the complainant's attorney. Because you reasonably anticipated litigation when you received the second request on September 2, you should have asserted the section 552.103 exception in response to the first request before the ten days expired on the first request. However, this office did not receive your request for a decision until September 16, 1998, more than ten days after your receipt of the first written request. Therefore, we conclude that the department failed to meet its ten-day deadline for requesting an opinion from this office.

When a governmental body fails to request a decision within ten business days of receiving a request for information, the information at issue is presumed public. *Hancock*

*v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 at 2 (1977).

In this instance, you have not presented this office with a compelling demonstration as to why the requested information should be withheld pursuant to section 552.103. We therefore deem your claimed exception to required public disclosure as being waived. We note, however, that some of the information at issue must be withheld from public disclosure pursuant to section 552.101 of the Government Code. Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. Although information relating to an internal investigation of sexual harassment claims involving public employees may be highly intimate or embarrassing, the public generally has a legitimate interest in knowing the details of such an investigation. Open Records Decision No. 444 (1986).

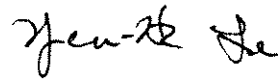
In *Morales v. Ellen*, 840 S.W.2d 519, 525 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and a summary of the board of inquiry that conducted the investigation. *Id.* The court ordered the release of the affidavit of the person under investigation and the summary of the investigation, stating that the public's interest was sufficiently served by the disclosure of these documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

After a review of the records, we conclude that most of the documents must be released to the requestor. Because the requestors are the complainant and her attorney, the information may not be withheld from the complainant on the basis of protecting her own privacy interests. *See* Gov't Code § 552.023(a). However, pursuant to *Ellen*, the identities of other victims and witnesses to the alleged sexual harassment are protected by the common-law privacy doctrine and must be withheld. *Id.* Furthermore, you must release to the requestors the statement of the individual accused of the sexual harassment. Because there is a legitimate public interest in the statement and the identity of the alleged harasser,

the department may not withhold this information under section 552.101. Contrarily, the public has no legitimate interest in the details of the victims' and witnesses' personal statements. *Id.* Therefore, you must withhold the statements of the other victims and witnesses to the alleged sexual harassment and their identifying information; you must release the remainder of the information to the requestors.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/nc

Ref.: ID# 120166

Enclosures: Submitted documents

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(w/o enclosures)